

FEDERAL RULES OF APPELLATE PROCEDURE

Rule 8. Stay or Injunction Pending Appeal**(a) Motion for Stay.**

(1) Initial Motion in the District Court. A party must ordinarily move first in the district court for the following relief:

- (A) a stay of the judgment or order of a district court pending appeal;
- (B) approval of a supersedeas bond; or
- (C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(2) **Motion in the Court of Appeals; Conditions on Relief.** A motion for the relief mentioned in Rule 8(a)(1) may be made to the court of appeals or to one of its judges.

(A) The motion must:

- (i) show that moving first in the district court would be impracticable; or
- (ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.

(B) The motion must also include:

- (i) the reasons for granting the relief requested and the facts relied on;
- (ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and
- (iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) A motion under this Rule 8(a)(2) must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge.

(E) The court may condition relief on a party's filing a bond or other appropriate security in the district court.

(b) Proceeding Against a Surety. If a party gives security in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the district court and irrevocably appoints the district clerk as the surety's agent on whom

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(a) Notice of Appeal; Trial Court's Judgment or Order. A motion for a stay or injunction pending appeal must be accompanied by:

- (1) a copy of the notice of appeal that has been filed with the trial court clerk;
- (2) a copy of the trial court's judgment or order on the merits; and
- (3) a copy of any order on the motion for a stay or injunction pending appeal.

(b) Length of Motion, Response, and Reply; Copies; Brief.

- (1) A motion or a response to a motion for a stay or injunction pending appeal may not exceed 20 pages. A reply may not exceed 10 pages.
- (2) An original and four copies of a motion, response, or reply must be filed.
- (3) A separate brief supporting a motion, response, or reply is not permitted.

(c) Notice and Service When Requesting Immediate Action; Facsimile.

- (1) A party moving for a stay or injunction pending appeal who requests immediate action by the court must - before filing - notify all parties that a motion will be filed and must utilize an expedited method of service.
- (2) If a motion for a stay or injunction pending appeal is sent to the court by facsimile transmission, a certificate of interest must be included, and opposing counsel must be served in the same manner. The filing must state the name, address, and, if applicable, the facsimile numbers of the persons served.

(d) Statement. If an initial motion for a stay or injunction pending appeal was not made in the district court under Fed. R. App. P. 8(a)(1), movant must include in its motion in this court a statement explaining why it was not practicable to do so.

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any papers affecting the surety's liability on the bond or undertaking may be served. On motion, a surety's liability may be enforced in the district court without the necessity of an independent action. The motion and any notice that the district court prescribes may be served on the district clerk, who must promptly mail a copy to each surety whose address is known.

- (c) **Stay in a Criminal Case.** Rule 38 of the Federal Rules of Criminal Procedure governs a stay in a criminal case.

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Practice Notes

Form Requirements. See Federal Circuit Rule 32(f) for form requirements for motions and other documents. See also Federal Rule of Appellate Procedure 27 and Federal Circuit Rule 27 for other requirements concerning motions.

Certificate of Interest. The form for the certificate of interest is at Appendix of Federal Circuit Forms, Form 6.

Rule 9: Release in a Criminal Case

(a) Release Before Judgment of Conviction:

- (1) The district court must state in writing, or orally on the record, the reasons for an order regarding the release or detention of a defendant in a criminal case. A party appealing from the order must file with the court of appeals a copy of the district court's order and the court's statement of reasons as soon as practicable after filing the notice of appeal. An appellant who questions the factual basis for the district court's order must file a transcript of the release proceedings or an explanation of why a transcript was not obtained.
- (2) After reasonable notice to the appellee, the court of appeals must promptly determine the appeal on the basis of the papers, affidavits, and parts of the record that the parties present or the court requires. Unless the court so orders, briefs need not be filed.
- (3) The court of appeals or one of its judges may order the defendant's release pending the disposition of the appeal.

- (b) Release After Judgment of Conviction.** A party entitled to do so may obtain review of a district court order regarding release after a judgment of conviction by filing a notice of appeal from that order in the district court, or by filing a motion in the court of appeals if the party has already filed a notice of appeal from the judgment of conviction. Both the order and the review are subject to Rule 9(a). The papers filed by the party seeking review must include a copy of the judgment of conviction.